ATTACHMENT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 7 2000

In the Matter of	)	
	)	
Application of SBC Communications Inc.	)	
Pursuant to Section 271 of the	)	CC Docket No. 00-65
Telecommunications Act of 1996	)	
To Provide In-Region, InterLATA Services	)	
in Texas	)	

SUPPLEMENTAL RESPONSIVE DECLARATION OF C. MICHAEL PFAU AND JULIE S. CHAMBERS ON BEHALF OF AT&T CORP.

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I. QUALIFICATIONS

A. C. Michael Pfau

1. My name is C. Michael Pfau. I am employed by AT&T Corp. ("AT&T") as Division Manager, AT&T Public Policy. My responsibilities at AT&T and qualifications for submitting this Supplemental Responsive Declaration are detailed in the declarations that accompany AT&T's comments on SBC's pending application (and its prior application) for authority to offer interLATA services in Texas.

B. Julie S. Chambers

2. My name is Julie S. Chambers. I am employed by AT&T as District Manager, AT&T/SWBT Account Team. My responsibilities at AT&T and qualifications for submitting this Supplemental Responsive Declaration are detailed in the declarations that accompany AT&T's comments on SBC's pending application (and its prior application) for authority to offer interLATA services in Texas.

3. We have prepared this Supplemental Responsive Declaration in order to address various points set forth in SBC's reply comments of May 19, 2000 and the accompanying affidavits, particularly the Supplemental Reply Affidavit of Michael C. Auinbauh.

II. SBC CAN AND SHOULD PROVIDE AT&T WITH NONDISCRIMINATORY ACCESS TO THE LOOPS AND SUPPORT NEEDED TO PERMIT AT&T EFFICIENTLY TO PROVIDE VOICE AND ADVANCED SERVICES OVER THE LOOP FACILITIES IT PURCHASES AS PART OF UNE-P.

4. Detailed discussion on digital subscriber line ("DSL") issues should not obscure the central issue in dispute. We begin, therefore, by restating the question: must SBC provide nondiscriminatory access to the loops and operations support systems ("OSS") needed to permit AT&T efficiently to provide voice and advanced services over the loops it purchases as part of the UNE Platform? AT&T says yes. SBC previously said yes (see ¶ 24 infra) but now says no.[1]

5. All AT&T seeks is access to the same network capabilities -- and to the same efficiencies and reliability -- that result when SWBT provides voice and data in conjunction with ASI (its advanced services affiliate) or shares its loop with a data CLEC. Whether AT&T deploys all of its own assets (digital subscriber line access multiplexers ("DSLAMs") and other packet switches) to provide advanced services or obtains those capabilities through voluntary commercial arrangements with a third party, what AT&T needs is simple: access to the same configuration, functionalities, and support utilized when SBC shares its loops with either ASI or a data CLEC.

6. If a single loop can be efficiently shared when SBC and its affiliate provide voice and data services, or when SBC provides voice services and a data-only CLEC provides advanced services, simple nondiscrimination principles require that the same efficiency must be available to a carrier that wishes to provide both voice and advanced services over a UNE-P loop. Yet AT&T has been wholly unsuccessful in obtaining the necessary cooperation from SBC that would enable AT&T to provide advanced services in the high-frequency spectrum ("HFS") of the local loops that AT&T leases from SBC. Accordingly, AT&T remains unable to

[1] Meanwhile, the TPUC has simply ignored the issue. Although SBC claims that the TPUC has "examined and addressed each of the [DSL] complaints that CLECs have raised," SBC 5/19 Reply at 9, this is false, as evidenced by the fact that the TPUC does not even mention AT&T's concerns in its comments to the FCC. In truth, the TPUC repeatedly has failed to examine or address AT&T's complaints regarding SBC's refusal to enable the efficient provision of DSL over UNE-P.

provide an integrated bundle of voice and data services to retail customers though the UNE-P architecture.

7. SBC incorrectly argues that when AT&T buys a UNE-P loop in combination with the switch and other UNEs AT&T has purchased only the voice band of that loop. In particular, SBC asserts that the UNE Platform may only be used to deploy voice grade service. Auinbauh Supp. Reply Aff. ¶¶ 12, 13. This assertion is foreclosed by the Act and the Commission's rules. The Act itself defines the term "network element" to include the "features, functions, and capabilities that are provided by means of such [network element.]" 47 U.S.C. § 153(29). The Act also requires ILECs to provide "nondiscriminatory access" to their network elements so that CLECs can provide the "telecommunications service" they seek to offer. 47 U.S.C. § 251(c)(3). Synthesizing these statutory requirements, the FCC's unbundling rule 307(c) states that:

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with *all of the unbundled network element's features, functions, and capabilities*, in a manner that allow the requesting telecommunications carrier to provide *any* telecommunications service that can be offered by means of that network element. 47 C.F.R. § 51.307 (emphasis added).

The FCC has repeatedly held that this duty applies directly to CLECs' use of unbundled loops to provide advanced services. Since August 1996, SBC, like all other ILECs, has been under an obligation to provide unbundled access to loops capable of transmitting digital signals, such as digital subscriber line (DSL). Local Competition Order, 11 FCC Rcd 15499, 15691 ¶ 380.

8. Because SBC has chosen to enable the efficient addition of DSL capabilities to the loops it uses to provide its own voice services, its refusal to permit AT&T to enjoy comparable efficiencies on loops over which AT&T provides voice services as part of UNE Platform is plainly discriminatory. The Line Sharing Order does not (and cannot) authorize this discrimination. Indeed, the Commission explicitly recognized in the Line Sharing Order that competitive carriers are entitled to "obtain combination of network elements and use those elements to provide circuit switched voice service *as well as data services*." Line Sharing Order ¶ 47 (emphasis added).

9. In order to enable AT&T to provide voice and advanced services over a UNE-P loop in a prompt, efficient and nondisruptive manner, AT&T needs SBC to insert a splitter into the UNE-P loop/port combination. Splitter insertion simply involves terminating the loop on the splitter and wiring the high-frequency (DSL) output of the splitter to a cross-connect running to the DSLAM, and wiring the low-frequency (analog voice) output of the splitter to the UNE-P local switching element. SBC must also provide nondiscriminatory operational support to facilitate the provision of voice and data services over a UNE-P loop -- just as it did when SWBT provided both voice and data service, now does when ASI provides data services and SWBT provides the voice service, and will soon do when data CLECs provide data service while SWBT provides the voice service.

10. From a technical perspective, there are no physical differences between ILEC-provided "line-sharing" that enables a data CLEC to provide data service over a loop on which SWBT provides voice service and the "line-splitting" required to enable a UNE-P carrier to provide both voice and data service on the same loop.[2] In both cases, SWBT's deployment of the splitter is essential to permit the efficient delivery of services on a single loop.[3]

11. Without the ILEC insertion of the splitter, the CLEC is faced with the rip-it-apart scenario or use of a second line if it is to compete with a voice and data offer. As noted below, in the former case, the FCC has found that the costs of collocation and the prospects of hot cuts represent a service impairment. In the latter case, the FCC found in the Line Sharing Order that

[2] SBC falsely claims that AT&T seeks to acquire "line-sharing" over UNE-P. Auinbauh Supp. Reply Aff. at ¶ 13 & n.15, citing AT&T's Pfau/Chambers Supplemental Declaration. But that Declaration refers (at ¶¶ 40-41) to "line-splitting," not line-sharing. AT&T has generally used the term "line sharing" as the Commission does, to refer to an arrangement where a CLEC that does not otherwise have rights to the use of a loop purchases from the ILEC the right to use only the HFS portion of the loop, while the incumbent provides voice services over the low-frequency spectrum of the loop. Under the arrangement sought by AT&T, the CLEC would purchase (or already has purchased) the entire loop from SBC, which would then be used to provide both voice and data services, consistent with the legal requirement that the purchaser of an unbundled network element must be permitted to exploit the full features, functions, and capabilities of that element.

[3] Contrary to SBC's claim, Auinbauh Supp. Reply Aff. at ¶ 13, AT&T does not claim that the splitter is itself an unbundled network element. Rather, as demonstrated below, such splitters are part of the loop element.

competing via a second line represented an impairment. Thus, all options that SBC has offered have previously been found to have significant impairments for the prospects of competition.

12. SBC's affiant Michael C. Auinbauh makes several erroneous statements in defense of SBC's refusal to provide AT&T access to line splitters. First, Auinbauh erroneously asserts that the analysis that the Commission applied to DSLAMs and packet switching "applies equally to splitters." Auinbauh Supp. Reply Aff. at ¶ 8. But this misrepresents the UNE Remand Order. Indeed, that order determined that "attached electronics," with the exception of DSLAMs, should be regarded as part of the loop. UNE Remand Order at ¶ 175.

13. As AT&T has previously explained, the splitter is a passive electronic filter that is attached to the loop in order to split or separate signals on the basis of their transmission frequencies. The functions of frequency splitting and packet switching are entirely different. The splitter enables the low-frequency voice signals on the loop to be directed to a circuit switch and the high-frequency data signals on that loop to be delivered to a packet switching network (including DSLAMs).[4] In contrast, packet switching refers to protocols in which messages are broken up into small packets before they are sent. Each packet contains header information about the source, destination, sequencing, etc., that governs the process in which packets of information are independently transmitted from point to point between source and destination and reassembled into proper sequence at the destination. A splitter is incapable of reading a header, or even of distinguishing between analog and digital transmissions, and does not implement routing instructions based upon transmitted information from the customer. The fact that a splitter *can,* as a matter of design convenience, be combined with a DSLAM does not mean that stand-alone splitters are involved in packet switching.[5]

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[4] Supp. Pfau/Chamber Decl. ¶¶ 40-42 n.31.

[5] SBC's position taken in a pending proceeding relating to implementation of the SBC/Ameritech merger conditions underscores this point. In conjunction with its request for interpretation of the SBC/Ameritech merger conditions, SBC argued that it should be entitled to retain control and ownership of line cards placed in remote terminals that have an integrated splitter functionality because the equipment "is not used solely in the provision of Advanced Services." See Letter from Paul K. Mancini, Vice President and Assistant General Counsel for SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission at 4 (Feb. 15, 2000).

14. Second, SBC's assertion that AT&T should not be entitled to the splitter functionality because splitters "are deployed exclusively to provide advanced services over a customer's existing loop" (Auinbauh Supp. Reply Aff. ¶ 8) is similarly flawed. The Commission has repeatedly recognized that the splitter is used not only to isolate data signals traversing the loop, but also to separate the voice signals for routing to the local carrier's voice switch. As described by the Commission in the Line Sharing Order, "[a] splitter bifurcates the digital *and voiceband* signals concurrently traversing the local loop, *directing the voiceband signal through a pair of copper wires to the Class 5 switch*, and directing the digital traffic through another pair of cooper wires to a DSLAM attached to the packet-switched network."[6] Thus, unlike the DSLAM, which is used "exclusively to provide advanced services," the splitter plays a role in the provision of both voice and advanced services.

15. SBC -- of all parties -- should recognize this distinction, given the care the Commission took in the SBC/Ameritech Merger Order to differentiate between equipment used entirely for advanced services and splitters used for both voice and data. That order permitted SBC's ILECs to transfer DSLAMs to their "separate affiliate" and also to transfer other equipment that is used solely to provide data services, but it specifically prohibited SBC's ILECs from transferring to their affiliate the splitters used to separate the voice and data signals on a customer's loop.[7]

16. Indeed, even subsequent to its reply comments in this proceeding, SBC in a different proceeding was invoking the merger order to argue that splitters used to separate voice and data signals are not "advanced services equipment" and are properly the province of the ILEC rather than any separate affiliate.[8]

17. Third, SBC's argument that the splitter is not part of the loop is inconsistent with principles of telephone engineering. It is indisputable that a bridge tap may be part of a loop, and

[6] Line Sharing Order ¶ 66 (emphasis supplied).
[7] See SBC/Ameritech Merger Order ¶ 365 & n.683, App. C at ¶ 3(d).
[8] Letter from Paul K. Mancini, SBC, to Carol E. Mattey, FCC, CC Docket No. 98-141, at 2-3 (June 2, 2000).

the Commission has expressly recognized the right of a purchaser of a loop element to insist that bridged taps be removed, even where the ILEC does not ordinarily perform such removals for itself, because it is not providing advanced services to those customers. It is likewise indisputable that load coils -- which in fact are nothing but low-pass filters -- may be part of a loop, and the Commission has expressly recognized the right of a purchaser of a loop element to insist that load coils be removed.[9] Yet SBC denies its obligation to provide a splitter, claiming it cannot be part of a loop, even though the insertion of a splitter is effectively nothing more than a bridge tap that derives two transmission paths from a single copper facility and provides electrical protection for the transmissions on each derived path.

18. Just as the Commission has recognized that competitors must be able to access the loop and all of its "features, functions, and capabilities" by requesting the removal of accreted filtering devices from the loop, UNE Remand Order ¶ 173, so too must competitors be entitled to request that filtering devices (*i.e*, the splitter) be added to the loop to enable a requesting carrier to use the full functionality of the loop. In either case, the removal or attachment of filtering devices that are necessary to enable voice and data transmission over a single loop simply gives effect to the Commission's determination that that Section 251(c)(3) requires ILECs to provide modifications to their facilities to the extent necessary to accommodate access to network elements. Local Competition Order ¶ 198. Thus, the question of whether the ILEC performs such modifications for itself is irrelevant to this determination.[10]

19. SBC seems to think that when it provides the UNE Platform its obligation is solely to deliver the existing combination of elements as is; if any modification or adjustment is required, the UNE-P must be disassembled and individual network elements must be reordered and connected by the CLEC. See Auinbauh Supp. Reply Aff. at ¶¶ 12, 13, 15, 19. But even as SBC resists allowing AT&T to access additional features, functions, and capabilities of the *loop*

[9] UNE Remand Order ¶¶ 172-173.

[10] In any event, SBC has been careful not to represent that it has never performed a splitting function for its own offering of voice and data services on a single loop. Further, the only way it could do so is by relying on the fiction that its 100 percent owned and controlled "affiliate," ASI, is a "separate" entity.

obtained as part of UNE-P, SBC does not deny the right of a CLEC to order additional features, functions, and capabilities of the *switch* that is provided as part of that same combination of network elements. UNE-P carriers routinely order vertical features (*e.g.*, call waiting, Caller ID, call blocking) for their customers, and, where necessary, SBC quite properly accommodates such requests by doing the "physical work" (see id. at ¶ 19) of modifying software instructions of the switch to ensure that the additional features, functions, and capabilities are activated.

20. In addition, SBC suggests that AT&T must break up existing UNE-P combinations to provide both voice and data services over a single loop because it has not obtained a DSL-capable loop. Auinbauh Supp. Reply Aff. ¶ 15. This suggestion, however, is meritless for several reasons. First, SBC ignores the fact the large majority of its existing loops are, in fact, already DSL-capable.[11] Second, SBC can and does perform any loop conditioning that is necessary to make the loop DSL-capable without requiring disconnection of the voice service it provides its own customers; certainly it does not detach the loop from the switch and require new orders for the loop and switching. Accordingly, there is no reason to require AT&T to break apart a UNE-P combination and place a new loop order before SWBT will perform loop conditioning. Third, Auinbauh's suggestion is completely irrelevant in instances where CLECs place an order for a new UNE-P that uses a line that has already been qualified as DSL-capable.

21. In any event, the work that AT&T is seeking to have SBC perform is precisely the same work that SWBT will perform for data CLECs seeking to "line share" with SWBT's voice service. With the exception of the number of cross-connections required, it is precisely the same work that SWBT has performed for ASI under virtual collocation arrangements and may continue to perform for ASI in the future.[12] The diagrams attached to the Supplemental Cruz Affidavit illustrate the essential sameness of the configurations needed by ASI, data CLECs, and AT&T. See Cruz Supp. Aff., Attachment B, Figs. 2, 4. Thus, SBC's refusal to do this for UNE-

[11] There is little, if any, reason that any SBC copper loop under 18,000 feet in length is not DSL-capable today.

[12] To the extent that ASI employs a DSLAM with an integrated splitter, SWBT would not be cross-connecting the data output to the DSLAM. SWBT would still run the cross-connect to the voice/data input of the DSLAM and run the cross-connect from the voice output of the DSLAM to the switch port appearance of SWBT.

P CLECs is not based on any legitimate technical or other reason, but rather upon a staunch determination to undermine the utility of the UNE Platform and to hinder competition by anyone who seeks to compete with SWBT's voice services.

22. Finally, SBC mischaracterizes AT&T's argument concerning SBC's refusal to provide data service when the customer switches to AT&T's voice service. SBC 5/19 Reply at 21 n.17. There is nothing "incompatible" about AT&T's contentions that (1) SBC must meet its legal obligation of enabling CLECs to provide both voice and data over a single UNE-P loop, and (2) so long as SBC is failing to meet this duty, by denying its own DSL service to customers who choose AT&T's voice service, SBC engages in unreasonable discrimination. Both arguments address the same problem: SBC's use of its monopoly position to undermine competition for voice services provided to customers who also want data service. Notably, SBC has yet to challenge on the merits AT&T's argument that SBC's denying its DSL service to customers AT&T serves via UNE-P is unjust, unreasonable, and unjustly and unreasonably discriminatory (in violation of Section 201(b)) and also represents an unreasonable restriction on the availability of a network element (in violation of Section 251(c)).[13]

III. SBC CONTINUES ITS "HIDE-THE-BALL" STRATEGY IN ORDER TO FORESTALL COMPETITION IN THE VOICE AND BUNDLED SERVICE MARKET.

23. Despite its claims of having embraced competition and opened its market, SBC's conduct in this proceeding tells a different story. At every turn, SBC has sought to confuse the

[13] In March of this year the Public Utilities Commission of Nevada held hearings on the Certificate of Public Convenience and Necessity sought by SBC Advanced Solutions, Inc. ("ASI") within Nevada. During the hearings, representatives from AT&T and other companies explained that ASI sought to offer its data services only to customers who selected Nevada Bell as their local exchange voice provider. See In the Matter of SBC Advanced Solutions, Inc. for Authority to Operate as a Competitive Provider of Telecommunications Services, Public Utilities Commission of Nevada, Docket No. 99-10009 ¶ 38 (May 23, 2000). In its Order granting ASI's application the Nevada Commission found, "SBC Advanced Solutions, Inc. shall not require customers to bundle SBC Advanced Solutions Inc.'s services with Nevada Bell's services." In doing so, the Nevada Commission stated that "CLECs should be able to offer voice service to customers that receive data service from ASI, and CLECs should be able to offer data service to consumers that receive voice service from Nevada Bell. To require customers to receive services from just one provider, flies in the face of competition and is inconsistent with the Act." Id. ¶ 67.

issues, distort the record, and generally seek to prevent the Commission from obtaining a clear picture of what SBC is permitting and what it isn't and why.

24. In its initial application, SBC ignored AT&T's concerns regarding SBC's refusal to provide UNE-P carriers the ability to offer DSL services over their unbundled loops, even though AT&T had raised this issue in Texas. AT&T also emphasized SBC's refusal in its initial comments on SBC's application, and in other proceedings before this Commission, but until now, SBC has only addressed this issue in cursory fashion. Perhaps the most telling example of this strategy is SBC's vacillation (or worse) regarding its willingness to cooperate in enabling the combination of voice and data services over UNE-P. In reply comments filed in conjunction with its first Texas application, SBC unequivocally stated, "AT&T is free to offer both voice and data services over the UNE Platform." SBC Reply Comments at 37 n.19. AT&T discovered this representation to be false some time ago,[14] but SBC waited until now, after 90 more days of delay and obfuscation, before confirming that it has no intention of honoring that commitment. SBC now says that AT&T must forego the UNE Platform if it wishes to provide data as well as voice services.[15] SBC 5/19 Reply at 21; Auinbauh Supp. Reply at ¶¶ 10-13.[16] Obviously, if SBC had merely honored its prior commitment, all the subsequent discussion and the current controversy could have been avoided.

25. SBC likewise misrepresented its true position with its claims that a CLEC that wishes to provide voice as well as data services "could share the voice line in precisely the same

[14] See Letter from James L. Casserly, on behalf of AT&T Corporation, to Magalie Roman Salas, FCC, CC Docket No. 00-4 (Mar. 3, 2000).

[15] Indeed, if a UNE-P CLEC seeks to provide a voice and data offer employing a single loop, regardless of whether or not a Project Pronto type architecture is employed, SBC requires the voice path to transit CLEC collocation. This requirement does not arise out of any technical requirement but is simply an SBC strategy to defeat the utility of UNE-P. As the Commission correctly noted, "collocation imposes materially greater costs on requesting carriers than use of the incumbent LEC's switching." UNE Remand Order ¶ 263. The Commission likewise expressed concerns that the combined impacts of extending a loop to collocation (hot cut process) stating that "the coordinated loop cutover process impairs the ability of a requesting carrier to provide timely service." Id. ¶ 271.

[16] Even now, SBC does not squarely face up to the inconsistency; SBC cites its prior statement but falsely represents it as having been a statement about a "single unbundled loop" rather than the UNE Platform." Compare SBC 5/19 Reply at 21 with SBC 2/22 Reply at 37 n.19.

way as SBC." SBC 2/22 Reply at 25 n.11; Auinbauh Supp. Reply Aff. at ¶ 18. This, of course, is precisely what AT&T wants to do, precisely what SBC refuses to permit AT&T to do, and precisely what the Commission must require SBC to do before allowing SBC to offer long distance services in Texas. There is no evidence in this record that SBC's approach to adding data services to its own lines is to saddle itself, its affiliate, or, any other data CLEC with a "rip-it-apart-and-then-rebuild-it" mandate. Yet SBC has now made clear that, when AT&T wishes to add data service to the loops on which it is currently providing voice service, SBC's first step is to force AT&T to "disconnect its UNE-P network arrangement," and then require AT&T to reorder the loop and switch port as separate network elements, and reconnect them after first running cross-connects to collocation space. Auinbauh Supp. Reply Aff. at ¶ 15. There is no evidence that this approach provides "nondiscriminatory" access to the unbundled loop or SBC's OSS and no basis for any inference of nondiscrimination.

26. These misrepresentations aside, an additional problem is SBC's deliberate and continuing lack of clarity in answering some of the fundamental questions about how it contemplates accommodating AT&T's need to combine voice and data over unbundled loops. While it is now clear that SBC would require AT&T to forego the UNE Platform, it remains unclear precisely how inconvenient, disruptive, and expensive SBC's preferred alternative will be. Based on experience with UNE loops and other facilities, AT&T has no doubt that SBC's approach will be more inconvenient, more disruptive, and more expensive than necessary, but SBC alone knows precisely how inconvenient, how disruptive, and how expensive. Details on these points, despite AT&T's effort to obtain clarification, are all in SBC's unique possession and have yet to be laid on the public record. If the process SBC envisions were defensible, surely it would have disclosed it to AT&T and other parties.

27. Certainly one set of additional burdens that will be imposed on AT&T will be unnecessary costs. Instead of being charged simply for loop qualification, UNE-P feature changes, and the cross-connections associated with inserting a splitter on the UNE-P loop, AT&T will potentially face the need to pay for up to five jumpers (when three would suffice if

the splitter were frame mounted), "glue charges" for connecting UNEs, and the cost of coordination to better assure the orders are working in a sequence that minimizes customer disruption.[17] In addition, AT&T would potentially incur cost for collocation space and cabling from the collocation space to SBC-ILEC frame appearances for the sole reason of satisfying the SBC mandate that the voice portion of the service pass through collocation. There is certainly no reason to believe that, if SWBT persuades a customer to add ASI's data service, SWBT will charge itself (or ASI) the nonrecurring charges associated with ordering a new loop, port, and shared transport.[18]

28. Unnecessary and extended interruption of the customer's service is another likely consequence of SBC's approach. SBC has not specified what procedures would apply or what intervals would be applicable, but it has said that the UNE-P arrangement would need to be dismantled before the new combination could be constructed. To reduce service outages for the customer, it would be necessary to coordinate the following procedures: (1) disconnection of the UNE-P, (2) connection of the loop to collocation, (3) connection of the switch port to collocation, and (4) associating the switch port with shared transport.[19] If any of these steps becomes disassociated from the others, or is worked at a different time than the others, the customer will suffer.[20] If such events occur with any regularity (as has occurred with SBC's

[17] Raising the possibility that SBC may seek to apply these charges is by no means an acknowledgement by AT&T that such charges are appropriate or that their current levels are cost-based. While SBC's deliberate refusal to provide any information that would enable AT&T to provide a more complete response, a few examples further illustrate the potential for economic harm. First, if SBC's approach results in a change between a mechanized (simple) order to a non-mechanized (complex) order, the order charge would change from $2.56 to $62.56. Second, if an existing UNE-P combination is disassembled and then reassembled, SBC may seek to apply illegal glue charges. Such charges would drastically change the economics of UNE-P.

[18] Moreover, any agreement by SWBT to charge itself (or ASI) the nonrecurring charges associated with such orders is simply a paper transaction that lacks real economic significance and will not minimize the discriminatory cost impact incurred by UNE-P CLECs.

[19] Although SWBT provides few details regarding this procedure, it appears that CLECs would be required to submit not merely one LSR (as AT&T currently does for UNE-P orders) but *separate* LSRs for the xDSL loop and for the unbundled switch port with shared transport -- and, quite possibly, a third, separate LSR to disconnect the existing UNE-P arrangement. Although a CLEC could itself physically disconnect the UNE-P network arrangement, SWBT might well insist on performing the disconnection itself (pursuant to the CLEC's request).

[20] While it is theoretically possible to utilize a second loop to the customer's premises, from a practical standpoint the option is not viable. SBC itself testified that the lack of a second loop to

three-order process for UNE-P), the customer's carrier will be destined for failure in the marketplace.

29. SBC has not shown that it stands ready to provide all of the necessary coordination, with a sufficient degree of reliability, to avoid such problems. Nor has it shown that the process SBC proposes would be remotely as reliable as those that are followed when a SWBT voice customer adds ASI's data service, or even when a SWBT voice customer adds a data CLEC's data service. SBC has certainly never provided evidence that it had developed procedures to insure that these steps are properly coordinated.

30. Other related problems are suggested by experience with the initial offerings of UNE-P by SBC and other ILECs. Although the conversion of an ILEC's POTS customer to a UNE-P carrier's POTS service is largely a matter of recordkeeping rather than physical rearrangement, experience has taught that these conversions were plagued by problems like customers losing their telephone numbers, directory listings being dropped, and E-911 databases being populated with incorrect information. The record in this proceeding points to customer-impacting problems resulting from multiple but related orders failing to be executed in their proper sequence. SBC has not provided operational evidence, nor could it, that the same sorts of problems (or even new ones) will not arise if UNE-P arrangements need to be torn down and then reassembled with new orders of individual network elements, using new procedures that have yet to be disclosed, much less tested.

31. SBC's insistence on disconnecting existing voice arrangements and rerouting them through CLEC collocation cages and back to the switch presents the same problems here for UNE-P as it did during the time that the FCC's Rule 315(b) was vacated. During that time, SBC flatly refused to provide UNE-P, and insisted that CLECs obtain access to combinations of UNEs exclusively through a collocation-based method that was patently discriminatory and in essentials no different than what SBC is now trying to impose on CLECs seeking to add DSL to

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customers' premises that is DSL capable is a major barrier to the data CLECs' ability to compete. See Pfau/Chambers Supp. Decl. at ¶¶ 33-34, citing 4/13 TPUC Workshop Transcript at 347, Chapman/Dysart Supp. Aff. ¶¶ 35-36, 38.

UNE-P. Now, as then, SBC is attempting to destroy the viability of UNE-P by forcing the UNE-P CLECs into a collocation method for recombining unbundled elements that (1) increases the degree of coordination and manual work that is necessary and, accordingly, increases likelihood of service interruptions and risk of extended outage for customers; (2) inhibits a voice carrier's ability to compete by introducing delays because of the time needed to apply for space, to construct collocation space, and then to install equipment (in this case, the splitter); (3) unnecessarily wastes central office and frame space, both of which are scarce and valuable resources; (4) degrades the quality of the service that a CLEC's customer will receive by increasing the overall number of points of connection (or "points of failure") where the loop connection is most likely to fail due to human error; and (5) imposes wasteful, unnecessary, and uncertain costs on CLECs.

32. AT&T is also concerned that SBC's approach would affect its ability to ensure the reliability of the voice service. When AT&T obtains UNE-P from SBC, SBC assumes responsibility for maintaining the integrity of the voice path -- loop, switch, and transport. When problems arise, AT&T can secure Mechanized Loop Testing from SBC, which enables sectionalization -- and more rapid remediation -- of faults. SBC may refuse to provide MLT access for loops that traverse collocation space and equipment supplied by a competitor, a position initially taken with the data CLEC when they requested such access in a line sharing configuration. Clearly there will be an opportunity for finger pointing because the collocation requirement creates the potential for unnecessary and expensive technician dispatches to definitely isolate trouble sources. Again, because SBC has chosen not to disclose the details regarding how its alternative for UNE-P CLECs will operate, there is no evidence or assurances that UNE-P carriers' customers will be afforded the same treatment as customers who obtain both voice and data from SBC, or voice service from SWBT and data service from a data CLEC.

33. In contrast to all these problems that can be expected if SBC's rip-it-apart-and-rebuild-it approach were to be permitted, these problems would all be minimized if SBC merely cooperated to permit UNE-P CLECs to fully utilize their loops in an efficient manner. Another

virtue of the approach AT&T advocates is that ILEC provision of the splitters facilitates additional customer choice in the future. When SBC provides the splitter used in a line sharing situation, the DSL supplier can be changed by moving a single jumper and the voice service need not be disrupted at all. On the other hand, if the splitter is integrated in the DSLAM or the splitter is separate but owned by the data CLEC, change of the DSL provider (or change of the voice provider) requires both services to be disrupted. Clearly this is a disincentive for change by customers who have existing voice and data service.

34. Effects on customers will also be negative. For example, a customer receiving SBC's voice service and a data CLEC's data service via an ILEC/data CLEC line sharing arrangement (in which the ILEC owns the splitter) would not be able to migrate to such services provided over the loop purchased by AT&T from SBC in a prompt, efficient, and nondisruptive manner, even though it is technically feasible to do so. The SBC/data CLEC service arrangement would utilize the network configuration set forth in Attachment B, Figs. 2 & 4 of the Supplemental Cruz Affidavit. An AT&T service arrangement would utilize exactly the same logical configuration. Yet, in order for the customer to migrate to AT&T as a voice carrier, while retaining data service provided through the use of the same data CLECs' facilities, SBC's approach would: (1) require AT&T to place an order to disconnect the working combination; (2) permit SBC to remove the ILEC-owned splitter; (3) force AT&T to provide its own splitter (or obtain the functionality from a DCLEC); and (4) require AT&T to reconfigure the service by ordering an unbundled DSL-capable loop, an unbundled switch port, shared transport, and the necessary cross-connects between the collocation space and both the switch and the distribution frame.

35. In short, competition will be seriously hindered if competitive voice providers (using UNE-P) are required to own splitters and purchase collocation, thereby needlessly engaging in the destruction of the UNE-P combination. The Commission must address and resolve this issue immediately in order to avoid the further delay in enabling meaningful

competition in the bundled and voice services markets and, accordingly, increased choices for Texas residents.

IV. SBC'S FAILURE TO PROVIDE AT&T WITH THE FUNCTIONALITIES AND PROCESSES NECESSARY TO PROVIDE VOICE AND DATA SERVICES OVER UNE-P HARMS COMPETITION FOR BOTH SERVICES.

36. What AT&T is seeking is entirely consistent with the Commission's prior decisions and with the Commission's (and the Telecommunications Act's) overarching goals. As the Commission has previously recognized, "For effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services that they seek to offer . . . ." UNE Remand Order ¶ 13. The Commission has expressly recognized the importance of the UNE Platform in enabling competitors to address the residential mass market. UNE Remand Order ¶ 12. The Commission has an explicit statutory duty to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." Section 706(a) of the Telecommunications Act. All of these goals and findings will be jeopardized if AT&T is precluded from providing both voice and data services over UNE-P.

37. AT&T is committed to providing residential consumers throughout Texas with a competitive choice for voice services. Tonge/Rutan Decl. at ¶¶ 14-22. In the near-term, the use of UNE-P is the only vehicle by which that objective can reasonably be pursued. SBC, however, has precluded CLECs from offering a competing voice/DSL package to residential customers using the UNE-platform. This action by SBC has positioned it to take advantage of the new marketplace reality that a growing number of consumers, especially the ones most desirable from the standpoint of a carrier, seek more than just local service. If SBC remains the only carrier that can supply "all the pieces" that consumers want and need, the prospects for competition will necessarily dim.

38. Indeed, it has always been AT&T's goal to offer customers both long distance services and high-speed data services. Providing a variety of services will help ensure that AT&T can meet the need of consumers to obtain not just local services, but the convenience of

receiving all of the telecommunications services they desire from a single source. To attain that goal, and satisfy customer demand, AT&T needs to be able to provide data service in addition to voice service. Thus, in addition to its efforts (unsuccessful thus far) to negotiate the necessary arrangements with SBC, AT&T has been working with a number of data CLECs that can provide the necessary functionalities that AT&T currently lacks itself. These agreements will enable it to respond to the demand in Texas for one-stop shopping that includes data service. However, AT&T cannot implement and test these arrangements, much less offer services under them, absent SBC's cooperation. If AT&T receives that cooperation, it will proceed as expeditiously as possible to add DSL service to the bundle of services it seeks to provide Texas consumers.[21]

39. The DSL market is set to explode from 300,000 lines in 1999 to 2.5 million lines by the end of this year.[22] This exponential growth is due, in large part, to consumer demand for increasing speeds of Internet access. It is also due in part to SBC's aggressive pursuit of a strategy calculated to ensure that SBC -- and no one else -- can offer "all the pieces" that consumers want.[23] In its comments and supplemental comments on SBC's Texas 271

[21] The prospect for such cooperation, however, seems dim. Despite the level of prominence that AT&T has afforded this issue and despite the repeated communications of its needs to SBC, the company still acts as if the need is only newly revealed and then only makes a vague statement about possibly addressing the need at some future date:

> SWBT is interested in exploring the use of SWBT's splitters to facilitate line sharing arrangements between two CLECs, where SWBT is not providing the voice service. SWBT views this as a potential business opportunity and intends to evaluate how it can respond to this market opportunity once SWBT's successful implementation of the line sharing arrangement mandated by the Commission is sufficiently well-established to ensure a consistent, quality product for SWBT's customers. SBC 6/6 Ex Parte Letter at 2.

[22] Business Wire, April 12, 2000, "Three of Nation's Largest Cities to Experience Major New DSL Rollout." By the end of 2004, the Yankee Group estimates that cable industry's market share in high-speed Internet access services is expected to shrink to about 42 percent, as DSL services become more widely available. Id.

[23] SBC Communications, Inc., "SBC Launches $6 Billion Initiative To Transform it into America's Largest Single Broadband Provider," SBC News Release at 5 (Oct. 18, 1999) ("SBC Pronto Press Release")(quoting SBC Chairman Edward E. Whitacre, Jr.).

applications, AT&T demonstrated that SBC's Project Pronto initiative is designed to maintain its first-mover advantage and to further SBC's well-documented efforts to smother competition.[24]

40. As AT&T previously reported, SBC had announced that it is spending $6 billion to ensure that, by year-end 2002, 77 million customers in its service territories will be able to order bundled local voice and high-speed data services from SBC. Pfau/Chambers Supp. Decl. ¶ 57. SBC's plans calls for it to sell and install a million DSL connections by the end of this year, up from 139,000 on January 1, 2000.[25] By year-end 2001, SBC's Chairman and Chief Executive Officer Edward Whitacre estimates, SBC will capture 2 million DSL customers.[26]

41. It has become clearer than ever that Texas, the nation's second most populous state with 20 million people, has become a key component of SBC's strategy. In the six-month period from October 1999 through March 31, 2000, SBC received more than 36,000 orders for DSL service in Texas. SBC 4/21 Ex Parte Letter (report on PM 58-09). In March, SBC received an average of more than 500 orders for DSL service in Texas per business day. Id. Extrapolating (conservatively) from SBC's current DSL statistics in the Texas marketplace through the remainder of the year, we estimate that SBC will capture about 300,000 Texas DSL subscribers by the end of 2000.[27] At this pace, SBC can expect to receive at least 2700 requests for DSL service in Texas per business day in the month of December 2000. If one reasonably assumes that SBC's DSL market in Texas will experience a growth rate that is proportional to Chairman Whitacre's expectations for region-wide DSL subscribership, SBC will have captured approximately 600,000 DSL subscribers in Texas by the end of 2001.

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[24] CC Docket 00-4, Comments of AT&T Corp. at 9-26; CC Docket 00-65, Supp. Comments of AT&T Corp. 10-12.

[25] Fortune, June 12, 2000, "Why the Biggest Baby Bell Is Wild About Broadband," ("Wild About Broadband").

[26] Id.

[27] This estimate is based upon a log-linear regression analysis of the monthly order volume from October through March. See SBC 4/21 Ex Parte Letter (report on PM 58-09). The coefficient of determination for the regression is .84, indicating the projected results reasonably match with the actual results. The projection assumes no subscriber disconnections during the period which although unlikely, at the same time, the disconnection rate during the first year of service delivery will be extremely lower particularly given the lack of competitive options and the possibility the customers must maintain service for a minimum period to avoid termination liabilities.

42. SBC's rapid deployment of advanced services gives it a huge first-mover advantage in the residential marketplace. As SBC's own data shows, it is SBC, and not the CLECs, that is "cleaning [everybody else's] clocks" in Texas. Currently, 9 out of every ten DSL subscribers in SBC's territory in Texas receives their DSL service from SBC. SBC 4/21 Ex Parte Letter (report on PM 58-09). In March, SBC received more DSL orders in 4 days than all other DSL providers, combined, received for the entire month. Id. Even more significantly, *every* customer that receives both DSL and voice service over a single loop in SBC's territory in Texas currently receives his or her voice service from SBC -- and SBC continues not to cooperate with UNE-P carriers who threaten SBC's voice monopoly. Thus, SBC continues to be uniquely positioned to serve millions of Texas homes with bundles of voice and advanced services.

43. In light of these statistics, it is not difficult to understand why SBC has denied, and continues to deny, AT&T the ability to satisfy consumers' demand for bundled voice and advanced services via UNE-P. It is certainly not a matter of technology limitation or lack of efficient operational processes. As discussed above, the feasibility of adding ILEC-deployed splitters, with minimal interruption of voice service, is beyond dispute. Indeed, this is what SBC will do for data CLECs that wish to line-share. Rather, it is a matter of simple economics. SBC clearly recognizes the demand for advanced service capabilities, as well as the need to engineer a considerable "first-mover" advantage. As Chairman Whitacre recently explained: "Broadband will be indispensable, and it's going to happen pretty quickly, . . . It will be as basic as telephone service."[28] SBC also recognizes the strategic significance of providing "one-stop shopping" for the range of services that consumers want and expect.[29]

44. Meanwhile, AT&T's market share for DSL in Texas is zero. But the adverse effects of SBC's conduct are not limited to the data market. SBC's refusal to accommodate the addition of DSL to UNE-P necessarily hinders AT&T from competing in the markets for data

[28] Wild About Broadband.

[29] See, e.g., SBC Communications, Inc., "SBC Launches $6 Billion Broadband Initiative," SBC News Release at 4 (Oct. 18, 1999) ("SBC Pronto Press Release").

services, voice services, and bundles of services. By insisting on a "rip-it-apart-and-rebuild-it" approach to the existing loop-port-transport combination, SBC is necessarily discriminating in favor of its ILECs and against companies like AT&T that wish to compete with the voice services SWBT provides, and the bundles that only SWBT can now efficiently offer and provide. The value of UNE-P as an entry strategy will be seriously undermined if a UNE-P carrier such as AT&T cannot efficiently add advanced services to its voice offering.

V. CONCLUSION

45. SBC's behavior constitutes a breach of its obligation to provide the functionalities and processes needed to enable UNE-P carriers to provide voice and advanced services using the full features, functions, and capabilities of the loop. SBC's recent statements on DSL do not change the fact that SBC has once again failed to carry its burden of proof regarding DSL issues in the context of UNE-P. To the contrary, SBC's recent statements regarding the DSL-over-UNE-P issue are remarkable for the degree to which they confirm SBC's anticompetitive intent. Accordingly, the Commission cannot find that SBC has met its obligation to fully implement checklist items 2 and 4.

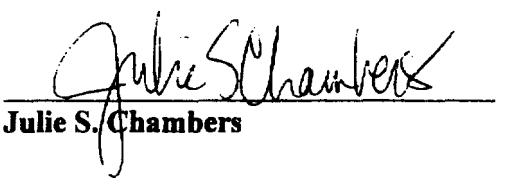
CC DOCKET 00-65

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7, 2000.

C. Michael Pfau

CC DOCKET 00-65

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 7, 2000.



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